

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 396-A
Case No. 87-29M/82-8C
(PUD Modification @ Penn Plaza)
September 11, 1989

By Z.C. Order No. 396 dated May 16, 1983, the Zoning Commission for the District of Columbia approved an application of the Westminster Investing Corporation and the Pennsylvania Avenue Development Corporation (PADC) for consolidated review of a Planned Unit Development (PUD), pursuant to the provisions of Section 2400 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The PUD approval was for the construction of a mixed-use development, including a retail/office building on Square 460 fronting on Pennsylvania Avenue, and a hotel/apartment retail building on Square 459 fronting on Indiana Avenue, N.W.

The PUD development was approved for a height of 110 feet for the office/retail building (known as Phase I) and 130 feet for the hotel/apartment/retail building (known as Phase II); a total gross floor area of 341,198 square feet; a maximum floor area ratio (FAR) of 6.53; a maximum lot occupancy of sixty-three (63) percent; a maximum of 364 below-grade-level parking spaces; a minimum of 240 hotel rooms; a minimum of 150 apartment units; and four (4) loading berths.

By Z.C. Order No. 570 dated March 14, 1988, the Zoning Commission approved an application of the Sigal/Zuckerman Company and the Walter Abernathy Corporation for a modification to the previously approved PUD and Z.C. Order No. 396.

The PUD modification approval was to change one of the proposed uses for the Phase II building from hotel to office use. In connection with the use change, the applicants proposed certain design modifications and other related changes, as well as amenities associated with Phase II. The previously approved height and gross floor area of Phase II would essentially remain the same. The minimum number of apartment units would be increased to 170 units.

Pursuant to 11 DCMR 3028, Z.C. Order No. 570 became final and effective upon publication in the D.C. Register on March

25, 1988. 11 DCMR 3029.5, in part, requires that a party in a proceeding file its motion for reconsideration no more than ten (10) days after an order becomes effective. Counsel for the applicant, by letter dated June 23, 1989, filed a motion for reconsideration of Z.C. Order No. 570.

The motion for reconsideration requested that the Zoning Commission waive its rules of practice and procedure to allow for consideration of the substance of the motion. The motion requested the Zoning Commission to grant approval of a modification to Z.C. Order No. 570, without a public hearing, to allow for a change in the mix of units in the residential portion of the project with an overall reduction from 170 dwelling units to 150.

The requested change would reduce the number of efficiency units and increase the number of two-bedroom units by combining smaller, adjacent units. However, the total amount of space devoted to residential use would remain the same, and the total number of bedrooms will be reduced by only one.

At the time Z.C. Order No. 570 was approved, the PADC had approved, in September of 1987, a 170 apartment unit scheme, with a unit mix as follows: 35 studio units, 88 one-bedroom units, 34 one-bedroom plus den units and 13 two-bedroom units.

The scheme approved by PADC, which was subsequently adopted by the Zoning Commission, requires the provision of producing 170 units within ten years with the flexibility to reduce the number of units to no fewer than 150 after the initial ten-year period. The Zoning Commission also reserved to the applicant the right to determine the mix and configuration of units.

On June 21, 1989, PADC reconsidered its earlier recommendation and approved the combination of smaller adjacent units to create more two bedroom units in a 150-unit scheme, in light of a change in market conditions and a recent, dramatic increase in the demand for large apartment units accompanied by a decreasing demand for studio units. The 150-unit scheme will provide the same total residential floor area as the original plan, with more than twice the number of two bedroom units as in the present plan and only one less bedroom than the overall number of bedrooms contained in the earlier 170-unit scheme.

On July 10, 1989, at its regular monthly meeting, the Zoning Commission waived its rules of practice, and considered the applicant's motion for reconsideration.

Neither the District of Columbia Office of Planning nor Advisory Neighborhood Commission - 2C filed comments regarding the applicant's motion for reconsideration.

The Zoning Commission concurs with the position of the applicant and believes that the proposed modification to Z.C. Order No. 570 will improve the marketability of the residential building, and that the modifications are reasonable, appropriate, and will not adversely affect the interest of neighboring property owners, the neighborhood, or the ANC.

The Zoning Commission believes that the proposed modifications are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

As a matter of courtesy, the proposed action of the Zoning Commission was referred to the National Capital Planning Commission (NCPC) for review and comment. NCPC, by report dated August 29, 1989 indicated that the proposed action of the Zoning Commission would not adversely affect the Federal establishment or other Federal interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of modifications to Z.C. Order No. 570, subject to the following guidelines, conditions, and standards:

1. The Planned Unit Development modifications approved herein shall be in accordance with a letter dated June 23, 1989 from the law firm of Wilkes Artis Hedrick & Lane and shown as Exhibit No. 52 in record.
2. The minimum number of residential units to be constructed in the Phase II portion of the PUD project shall be reduced from 170 to 150. The following shall apply:
 - a. Reduce the number of bedrooms from 183 to 182;
 - b. Increase number of two-bedroom units from 13 to 32;
 - c. Reduce the number of efficiencies from 35 to 14; and
 - d. Reduce the number of one-bedroom units from 122 to 104.


3. There shall be no change in the amount of gross floor area devoted to residential use; that is, 116,000 square feet.
4. No building permit shall be issued for the site until the applicant has recorded a covenant in the land records of the District of Columbia between the owner and the District of Columbia satisfactory to the Office of Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the owner and all successors in title to construct on and use of the property in accordance with this Order and amendments thereto of the Zoning Commission.
5. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of the DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.
6. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, application must be filed for a building permit as specified in Subsections 2407.1 and 2406.8 DCMR Title 11. Construction shall start within three years of the effective date of this Order.
7. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2038, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

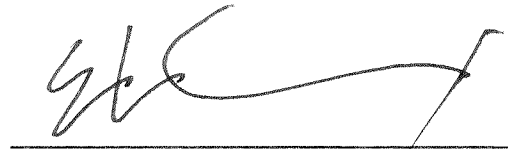
Vote of the Zoning Commission taken at the public meeting on July 10, 1989: 3-0 (Maybelle Taylor Bennett, John G. Parsons and Lindsley Williams, to approve with conditions - Lloyd D. Smith and William L. Ensign, not voting not having participated in the case).

The guidelines, conditions and standards were approved by the Zoning Commission at the public meeting on August 7, 1989.

This order was adopted by the Zoning Commission at the public meeting on September 11, 1989 by a vote of 3-0: (Lloyd D. Smith, John G. Parsons and Maybelle Taylor Bennett, to adopt - Teresh Boasberg, not voting not having participated in the case and William L. Ensign, not present not voting).

In accordance with the provisions of 11 DCMR 3028.8, this order shall become final and effective upon publication in the D.C. Register; that is on OCT 13 1989.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat

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